

Remarks

Applicants appreciate the Examiner's acknowledgment in the Office Action mailed January 24, 2007 that the claims as pending are novel and non-obvious in view of Bergstrom.

Rejection Under 35 U.S.C. § 112, first paragraph

Claims 2-9, 11, 12, 41, 42, and 48-54 were rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor had possession of the claimed invention. Applicants respectfully traverse this rejection.

As noted by the Examiner, Manual for Patent Examining Procedure states that "any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims" (MPEP 2173.05(i)).

The Examiner indicated that the negative limitation "wherein when the copolymer is in the form of a brush copolymer, the polycationic block in not polyethylene imine" was disclosed or suggested by application as originally filed. In particular, the Examiner indicated that "the combination of a brush copolymer comprising polyethylene imine as the polycationic block" was not positively recited in the specification (Office Action mailed January 24, 2007, page 3, lines 17-18). This is incorrect.

The specification discloses the specifically disclaimed combination. For example, the specification contains a complete section brush copolymers (*see* page 7, line 1 until page 8, line

18). Within this section, the specification explains that suitable polycationic blocks include positively charged synthetic polymers, (page 7, lines 18-20) and specifically lists polyethylencimine as a representative positively charged synthetic polymer (page 7, lines 25-26). Thus the disclaimed subject matter is positively recited in the specification in accordance with M.P.E.P. § 2173.05(i).

Therefore the disclaimer in claims 41 and 48 is supported by the specification; and claims 2-9, 11, 12, 41, 42, and 48-54 comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

Double Patenting Rejection

Claims 2-9, 11, 12, 41, 42, and 48-52 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,743,521 to Hubbell *et al.*, in view of Bergstrom or U.S. Patent No. 6,013,855 to McPherson et al. ("McPherson"). In response, Applicants submit a terminal disclaimer to overcome this double patenting rejection.

Applicants believe that the claims should now be in condition for allowance. However, if the Examiner believes that the present application is not in condition for allowance, the undersigned respectfully requests an interview with the Examiner and his Supervisor.

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RESPONSE TO OFFICE ACTION

Allowance of claims 2-9, 11, 12, 41, 42, and 48-54 is respectfully solicited.

Respectfully submitted,

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